

**New Networks, Comments 1:
Open Internet Remand Proceeding
GN Docket No. 14-28,
July 14, 2014**

Special Report

“Title Shopping” Exposed: Solving Net Neutrality Requires Investigations

Verizon’s FiOS, FTTP, (Fiber-to-the-Premises) Networks are Classified as “Title II”, Common Carriage, Telecommunications Services —Today. Yet, Verizon Failed to Disclose Material, Essential Facts to the FCC, the US Courts and the Public.

“Title Shopping is the use of different regulatory classifications for the same product or service in different local, state and federal regulatory or legal proceedings. It is designed to maximize the ‘regulatory’ benefits that would not be available if only one classification was applied.”

New Networks

Bruce Kushnick, Executive Director

Contact: Bruce Kushnick
bruce@newnetwork.com
718-333-5161

This is being done in as an extension of **“It’s All Interconnected”¹**, a report by Public Utility Law Project, written by New Networks, with assistance by David Bergmann.

¹ <http://newnetworks.com/verizonfiostitle2/>

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“Title Shopping” Exposed: Verizon’s FiOS is Based on a Title II, FTTP Network. Shame They Never Told the Court, the FCC or the Public.

“Title Shopping”² is the use of different regulatory classifications for the same product or service in different local, state and federal regulatory or legal proceedings. It is designed to maximize the ‘regulatory’ benefits that would not be available if only one classification was applied.”

At the FCC and in the courts, Verizon has claimed over and over again that the company and America will be harmed if the FCC ‘reclassifies’ broadband as a ‘Title II’ service using “telephone era utility regulation”. Verizon even sued the FCC to block the Open Internet Order, commonly referred to as “Net Neutrality”. Yet, in almost every state law and in every Verizon local and state-based cable franchise, Verizon’s FiOS uses a FTTP, Fiber-to-the-Premises, network which is classified as a “Title II”, telecommunications, common carriage service.

After going through thousands of pages of Verizon’s statements, filings at the FCC, and court documents, even listening to the oral arguments made by their lawyers, we can not find one place where Verizon told the regulators or the courts that Verizon’s entire wireline FiOS deployment in every state is based on Title II.

Was Verizon required to make this essential fact known to the court or to the FCC?

And while Verizon et al claim that Net Neutrality and reclassifying broadband will harm investment, Verizon’s uses “Title II” as a cash machine. In just New York State, Verizon NY was able to charge regular phone customers approx \$4 billion in extra basic phone charges from 2006-2013 for ‘massive deployment of fiber optics’ because the fiber optic wires are ‘Title II’.³

Welcome to “Title Shopping”.

Compare these two statements, both by Verizon, pertaining to the use of ‘Title II’.

1) Verizon New Jersey's FiOS Cable TV Franchise Agreement⁴, Renewed, 2014.

"Verizon NJ has been upgrading its telecommunications facilities in large portions of its telecommunications service territory so that cable television

² NOTE: “Title Shopping” is a term coined by Eli Noam, Director of Columbia University CITI program, when discussing the findings of the PULP-New Networks report.

³ It’s All Interconnected, PULP-New Networks

⁴ http://www.verizon.com/about/community/nj_swf_renewal.htm

services may be provided over these facilities. This upgrade consists of deploying fiber optic facilities directly to the subscriber premises. The construction of Verizon NJ's fiber-to-the-premises FTTP network (the FTTP network) is being performed under the authority of Title II of the Communications Act of 1934 and under the appropriate state telecommunications authority granted to Verizon NJ by the Board and under chapters 3 and 17 of the Department of Public Utilities Act of 1948. The FTTP network uses fiber optic cable and optical electronics to directly link homes to the Verizon NJ networks.

"Pursuant to the NJSA 45:5A-15, telecommunication service providers currently authorized to provide service in New Jersey do not require approval to upgrade their facilities for the provision of cable television service.

"As such any construction being performed in the public rights of way is being undertaken pursuant to Verizon NJ authority as a telecommunication service provider."

2) Verizon Comments, Open Internet Remand Proceeding,⁵ May 14, 2014

"Rotary Telephone-Era Utility Regulation Is Not the Answer. In contrast to an approach that encourages innovation and investment in all parts of the Internet ecosystem, some now propose that the Commission "reclassify" Internet access service and apply 1930's utility regulation to these services. Similarly, others, including Mozilla, would conjure up new "transport" services out of Internet access services and subject this newly discovered "service" to Title II utility-style regulation, thus having the same effect. Any such approach is unnecessary to protect the openness of the Internet and would be harmful and counterproductive to the Commission's goals.

"In the case of broadband Internet services, in contrast, policymakers' longstanding approach has relied – with stunning success – on flexibility and competition to spur innovation and investment, rather than a central-planning model of utility regulation with the opposite effects. This fundamental difference has informed how broadband Internet providers have developed their networks, services, and basic business models and has prompted hundreds of billions of dollars of investment in wireline and wireless broadband infrastructure...

⁵ <http://apps.fcc.gov/ecfs/document/view?id=7521124643>

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“Any proposal now to reclassify broadband Internet access or some new “transport” component of Internet access as subject to utility regulation would therefore undermine innovation, destabilize current investments and cast a cloud of regulatory uncertainty that would deter these heavy and much needed investments. The Commission itself foresaw these risks nearly a decade ago when it argued before the Supreme Court that common carriage regulation likely would “discourage investment in facilities” and spur broadband providers to “raise their prices and postpone or forego plans to deploy new broadband infrastructure.”

We won't dwell on how we ended up with this 'Battle of the Titles', but it is clear that exposing the implications of Title Shopping could change the direction of communications policy in the US.

- At the FCC and in the courts, Verizon has claimed that FiOS (and the fiber networks) is Title I, an 'information' service. This allowed Verizon to close the fiber optic networks to competitors, including other ISPs, (Internet Service Providers), and CLECs, (Competitive Local Exchange Companies), and even competitive cable providers as an 'information service' has no requirement for wholesale services.
- This has also allowed for the vertical integration of all of the Verizon products, which created Net Neutrality concerns, as it creates a bottleneck; the controller of the wires gives their own affiliate companies control over multiple lines of business and each affiliate gets advantages from the 'utility' networks.
- In New York State, Verizon claims FiOS's FTTP, Fiber to-the-Premises, is Title II, a telecommunications service, and using this title, the State granted multiple rate increases on POTS, Plain Old Telephone Service, residential customers for the 'massive investment in fiber optics'.
- In city and state-wide cable franchises around the US, Verizon uses Title II to get the rights-of-way to provide their 'cable service', 'Title VI', without having to go through a cable franchise process, as well as gets all of the perks — like passing through the cable franchise fees to customers.

But this is much more damaging and pervasive as all of Verizon's affiliate companies are taking advantage of "Title Shopping".

- Verizon Wireless, Title III, appears to be able to have the 'fiber-to-the-cell-towers' expenses dumped into the state utility as a Title II service.
- Verizon's 'special access' services are classified as Title II, so that local service customers pay a disproportionate amount of the expenses for the network costs.
- Verizon has been dismantling the state-utility networks by using Title II to dump construction expenses into the utility, while the revenues and profits from the affiliates (and assets) goes into a non-regulated area that is 'Title I'.

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- Verizon and AT&T claim these Title I areas are private property for personal use, but they may be confiscating ‘utility assets’ — funded through excess charges from local phone customers.
- Verizon’s vertical integration not only controls the customer side of using the wires, such as Net Neutrality issues or ‘bandwidth caps’, but also on the business-to-business side in the interconnection agreements as well as ‘peering’ issues with other companies, such as Netflix.

Unfortunately, no regulator at any level of government has noticed or taken any affirmative actions to stop this practice, but there are serious legal issues to all of this — and many harmful consequences. For example, if Verizon claims the FTTP upgrades are for FIOS and are Title I, they would have serious legal problems as it is not legal to cross-subsidize local rates with an information or cable service in New York State. Or if the networks are really ‘Title II’, then Verizon has gamed the FCC and the courts’ decision making process on almost every aspect of communications, from Net Neutrality, or blocking competitors, to allowing Verizon to charge customers for Title II networks.

We Ask the FCC and the States to Investigate and Take the Next Steps.

We can not find any instance where Verizon disclosed to the FCC or to the courts or to the public that the company’s primary fiber optic services are now classified as Title II today and have been since before the Verizon’s challenge of the Open Internet Order.

And we note that throughout Verizon’s comments and reply comments in the Internet Order proceedings, Verizon never mentioned the words “cable service” or “utility”, even though FiOS TV has ‘cable’ franchises, but is classified as a ‘telecommunications’ service, while the overwhelming infrastructure of Verizon is part of the PSTN, the Public Switched Telephone Networks, that are the state-based communications utilities.

Therefore, we ask the FCC to start an investigation into whether Verizon’s networks are already classified as Title II and whether Verizon has misled the FCC, and even the courts, in failing to reveal and supply basic, essential facts, as these facts have implications on every aspect of the FCC’s decision making process, from the IP transition and Verizon’s filings to use Section 251 to shut off the copper, or to the Open Internet Order, or even peering and interconnection issues with Netflix or the ‘special access’ costs to competitors.

Net Neutrality is Solved. If the networks are already classified as Title II (and Verizon has, in fact, separated the “FiOS” cable, Internet and broadband services) then there is no need for any reclassification.

Our Position Is Simple: Verizon’s affiliates have taken control of critical infrastructure and have caused a bottleneck to and from the Internet. This has also allowed the affiliate companies to dismantle the PSTN, state-based utilities, and privatize publicly-funded

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assets or allowed whole areas of the state-based infrastructure, especially suburban and rural areas, as well as ‘low income’ areas, to deteriorate because the companies diverted funds to other lines of business, many times overseas, instead of doing the upgrades that customers actually paid for via rate increases and state alternative regulation plans.

Returning competition by opening the networks and making sure that the affiliates that use the networks pay their fair share, like all other competitors, will not only solve Net Neutrality, but will bring customers lower prices, higher speeds and choice.

And in our other comments in this proceeding we will be presenting ample documentation of the flows of money between and among the utility networks and the affiliate companies, as well as a roadmap to fix Net Neutrality and make the US Number 1 in communications — again.

Next Steps: What the FCC Must Do.

- Examine Verizon’s use of Title II currently and compare that with their other claims pertaining to Title I, information services.
- Require the unbundling of the FTTP networks to allow for all forms of service competition over the Title II networks, common carriage, networks.

And based on our other comments in the Open Internet Order proceeding:

- Remove the affiliate companies’ ability to control the services over the wire.
- Have the affiliate companies pay competitive prices, like the other competitors.
- Do a complete financial audit of the flows of money from the utility networks to and from the affiliate companies. This will prove that the utility networks are still profitable, as the losses being incurred are, in a large part from the other affiliate companies only paying incremental costs.
- Reinstate ARMIS and Data Collection. Get all data that would be available in the original FCC ARMIS reports by state, using the USOA accounting standards, as well as a state-based SEC reports, by state.

AT&T — We Request that the FCC:

- Investigate AT&T’s use of the utility network wires for U-Verse, as it is a ‘copper-to-the-home’ service based on the exact same utility, legacy copper wires.
- We believe AT&T is using the same accounting as Verizon and this needs immediate investigation.
- AT&T has stopped publishing any data about their state-based utility networks or the number of lines in service. Get all data that would be available in the original FCC ARMIS reports by state, using the USOA accounting standards, as well as a state-based SEC reports, by state.

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Investigate Customers as Funders of the Broadband, Fiber Optic Networks.

We request that the FCC do a complete audit, as well as data collection and analysis, by state, to examine how much money was collected from ratepayers via excess phone charges to fund these other activities, including the development and deployment of broadband as well as the creation and implementation of all of the affiliate companies' business activates — based on Title II classifications.

This Special Report is an extension of “**It’s All Interconnected**”⁶, a report by Public Utility Law Project, written by New Networks, with assistance by David Bergmann.

The report supplies an analysis of the flows of money based on Verizon New York using the Title II classification to charge local phone customers for the deployment of FiOS as well as the funding of other affiliate company activates, which also use Title Shopping to get financial and regulatory perks.

⁶ <http://newnetworks.com/verizonfiostitle2/>

Verizon: “Title Shopping” Examples.

The following outlines examples of Title Shopping. We are just scratching the surface.

3) **Verizon’s Fiber Optic FiOS Uses ‘Title II’. By 2007, Verizon had Franchises in 835 Different Locations in 12 States.**

Just to reinforce how the FCC, the courts and the states have been ‘gamed’, we found this in the Verizon District of Columbia (DC) franchise application.⁷ By 2007, Verizon had franchises in 835 different locations in 12 states, and in the application Verizon again repeats that the DC deployment is a Title II service.

As of August 3, 2007, affiliates of VZ DC hold cable television franchises (both local and state issued) covering 835 jurisdictions in areas of Texas, Indiana, Virginia, Maryland, Florida, California, Pennsylvania, New York, New Jersey, Delaware and Massachusetts, Oregon, and Rhode Island. As of the end of June, 2007, FiOS TV service was available to more than 3.9 million premises in 12 of the states where the Fiber to the Premises (FTTP) network is being constructed: California, Delaware, Florida, Indiana, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Texas and Virginia. 515,000 customers subscribed to FiOS TV as of the end of June 2007.

Verizon affiliates currently hold cable franchise agreements in the following local franchising authorities in the State of Maryland: Howard County, Montgomery County, Barnesville Town, Brookeville Town, Chevy Chase Town, Chevy Chase Section 5 Village, Chevy Chase Section 3 Village, Chevy Chase View Town, Garrett Park Town, Glen Echo Town, Kensington Town, Laytonsville Town, Martin's Additions Village, North Chevy Chase Village, Poolesville Town, Somerset Town, Takoma Park City, Washington Grove Town, Prince Georges County, Berwyn Heights, Bladensburg, Brentwood, Cheverly, College Park, Colmar Manor, Cottage City, District Heights, Edmonston, Glenarden, Greenbelt, Hyattsville, Landover Hills, Morningside, Mt. Rainier, New Carrollton, North Brentwood, Riverdale Park, Seat Pleasant, University Park, Upper Marlboro, City of Bowie, City of Laurel, Anne Arundel County, City of Annapolis, Baltimore County, Anne Arundel County, City of Annapolis, Baltimore County and Highland Beach.

Verizon affiliates currently hold cable franchise agreements in the following local franchising authorities in the Commonwealth of Virginia: Arlington County, Fairfax County, Town of Vienna, Town of Herndon, City of Falls Church, City of Fairfax, Town of Clifton, Prince William County, Town of Dumfries, Loudoun County, Town of Leesburg, Spotsylvania County, City of Fredericksburg, Henrico County, Chesterfield County, City of Richmond, City of Virginia Beach and City of Newport News.

Verizon currently provides cable service in Montgomery County, Maryland; the cable franchise agreement was effective as of November 28, 2006 and Verizon initiated cable service in the County on December 5, 2006. Verizon also provides cable service in Fairfax County, Virginia; the cable franchise agreement was effective as of October 1, 2005 and Verizon initiated cable service in the County on November 25, 2005. In both counties, Verizon began the construction of its Title II FTTP network in late 2004. Therefore, Verizon was able to initiate cable service to some residents soon after the execution of a cable franchise agreement.

⁷ http://oct.dc.gov/information/legal_docs/Verizon_Revised_Cable_Franchise_Application.pdf

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Let us be very clear. This describes a fiber optic, FTTP network that is a telecommunications service as defined by the Telecommunications Act of 1934. And Verizon DC was not seeking permission for building these networks, only to use the networks, once installed, for cable TV service.

The proposed cable service will be provided over VZ DC's FTTP network, an extension and enhancement of the existing telecommunications network. A general description of the construction of the FTTP network is provided in Attachment 4.

VZ DC will install its FTTP network as a common carrier pursuant to Title II of the Communications Act of 1934, as amended, in accordance with its authority under DC and Federal law. Accordingly, VZ DC is not seeking authority through this Application to construct the FTTP network, but rather is seeking a franchise to use the FTTP network, once installed, to provide cable services in the District.

4) Darker Corners: Verizon FiOS TV is a 'Telecommunications' Service.

To say that this is going to take America down a dark hole is putting it mildly. Verizon has decided to have their "FiOS TV" be a 'telecommunications service, not a cable service (Title VI) or an information service, Title I.

In state laws, FiOS TV is a telecommunications service, and in the cable franchise it is Title II service — and it is a 'cable service'.

And yet, in comments/reply comments and other areas, FiOS TV is a "managed video service offered over a private network basis", in another it is the "all fiber FiOS network", and in yet another it is a "video subscription" service.

5) State SEC Report: FiOS TV is a Telecommunications Service.

This next example is taken directly from Verizon New England's (which is the incumbent phone company for Massachusetts and Rhode Island) SEC quarterly report for the year ending December, 31, 2010. This is almost identical language to every Verizon state-based utility. We note that 2010 was the last year Verizon published these SEC-state-based reports.

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Description of Business

Verizon New England Inc. (Verizon New England or the Company) and its wholly owned subsidiary, Northern New England Telephone Operations, LLC, are wholly owned subsidiaries of NYNEX Corporation (NYNEX), which is a wholly owned subsidiary of Verizon Communications Inc. (Verizon). We have one reportable segment which provides domestic wireline telecommunications services. We currently provide three basic types of telecommunications services:

- *Exchange telecommunication service* is the transmission of telecommunications among customers located within a local calling area within a LATA. Examples of exchange telecommunications services include switched local residential and business services, local private line voice and data services and Centrex services. We also provide toll services within a LATA (intraLATA long distance).
- *Exchange access service* links a customer's premises and the transmission facilities of other telecommunications carriers, generally interLATA carriers. Examples of exchange access services include switched access and special access services.
- In addition, we also provide fiber-to-the-premises services, operated under the FiOS service mark (FiOS TV), for residential and small business subscribers in certain areas.

The communications services we provide are subject to regulation by the state regulatory commissions of Massachusetts and Rhode Island with respect to intrastate rates and services and other matters. The Federal Communications Commission (FCC) regulates rates that we charge long distance carriers and end-user subscribers for interstate access services.

6) Verizon: Comments of Verizon and Verizon Wireless⁸

Verizon has a host of different definitions about FiOS TV and they do not match the Verizon state-based definitions.

- **“Managed video service consisting of video programming delivered on a private network basis”**

"For example, as Verizon has rolled out its next-generation fiber network, one of the services that it has offered is FiOS TV, which currently reaches over 14.5 million households and businesses. This service is a managed video service consisting of video programming delivered on a private network basis (including both linear programming and Video on Demand (“VOD”).

- **Next-Generation, All-Fiber FiOS Network**

"Verizon is investing more than \$23 billion to pass 19 million premises with its next-generation, all-fiber FiOS network by the end of this year, and has already passed more than 14.5 million of those premises.”⁹

⁸ In the Matter of Preserving the Open Internet Broadband Industry Practices GN Docket No. 09-191 WC Docket No. 07-52

⁹ Verizon Comments, Topper Decl. ¶ 25.

- **FiOS— Video Subscription Service**

"That is evident from Verizon's deployment of FiOS. Verizon could not have justified the massive investments without the ability to offer the video subscription service that now competes with cable (and that the NPRM acknowledges is a managed service), as well as the potential for other differentiated services."

7) Verizon has Cable Franchise Agreements to Offer 'Cable Services', FiOS.

And yet, Verizon New York has a cable franchise with the City of New York for FiOS.

"Cable Franchise Agreement by and between The City of New York and Verizon New York Inc."¹⁰

THIS AGREEMENT (the "Agreement") is entered into by and between the City of New York, a validly organized and existing political subdivision of the State of New York (the "City") and Verizon New York Inc., a corporation duly organized under the applicable laws of the State of New York ("Verizon" or the "Franchisee").

We do not argue that there can be mixed use of the same line with different classifications. But, when examining the flows of money and the overlap of different titles and classifications used, it is clear that there are massive conflicts, almost always resulting in harming customers in a myriad of ways and benefiting Verizon.

8) Verizon's Response to Comments Filed in their Request to "Shut Off the Copper" as Part of their FCC Section 251 Filings Never Mentions Title II.¹¹

Title Shopping is all pervasive and in every Verizon state and federal action.

Verizon has started to 'shut off the copper' networks in some areas that have been upgraded to FiOS, using a 'below-the-radar' approach that relies on 'Section 251' of the Telecommunications Act, which rubber stamps small network changes.

In one location, Belle Harbor, Queens, New York City, Verizon is closing an area that covers a population of 50,000 people.¹²

¹⁰ http://www.nyc.gov/html/doitt/downloads/pdf/verizon_nyc_franchise_agreement_approved_by_fcrc.pdf

¹¹ <http://www.teletruth.org/docs/VerizonNYVaresponse.pdf>

¹² http://www.huffingtonpost.com/bruce-kushnick/verizon-questions-our-acc_b_5569224.html

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When Verizon shuts off the copper wires, which are Title II and part of the state-based utility networks, are the new fiber optic wires ‘Title II’? Are they part of the state utility? During the Section 251 proceeding to shut the copper in Belle Harbor, Queens, New York, Verizon responded to comments made by others. Notice that Verizon doesn’t mention Title II but that FiOS is a brand of services that uses ‘fiber optic cables’.¹³

"To be clear: service received over fiber facilities is not the same thing as Verizon’s FiOS service. Fiber refers to a physical medium: a network made up of fiber optic cables. FiOS refers to particular Verizon branded voice, video, and data services – FiOS Digital Voice, FiOS TV, and FiOS Internet – that Verizon provides on an optional basis to customers over fiber. While millions of customers have elected to switch to Verizon’s best-in-class FiOS service –provisioned over fiber-optic cable – many others, including those who so choose in these two wire centers, receive the same traditional phone service, with the same features and at the same or better price, over Verizon’s advanced fiber network.”

And this dichotomy runs through every Verizon filing at the FCC as compared to the state. Moreover, getting a straight answer out of Verizon is impossible. In another response by Verizon, the company actually claims that the networks are not being replaced with fiber optics for FiOS but for regular phone service.

Verizon writes:¹⁴

"He (Kushnick) claims Verizon is working 'to shut off the copper in areas that have been upgraded to FiOS and force customers onto FiOS.' This is false. The areas he sites are areas where we are replacing copper lines with fiber (not 'FiOS', which is a data and video service). In these areas, customers are being provided with phone services over fiber, including the same POTS service they had previously received, at the same price. Nothing more."

I didn't know that Verizon had a sense of humor. Verizon is not putting in fiber for phone service. They could use the copper for that.

¹³ http://www.huffingtonpost.com/bruce-kushnick/verizon-questions-our-acc_b_5569224.html

¹⁴ <http://www.teletruth.org/docs/VerizonNYVaresponse.pdf>

From Verizon's website, July 8th, 2014

"What Exactly is FiOS You Ask?"¹⁵

"Well, it's not cable. And it's definitely not copper wiring. FiOS replaces them by building a network of 100% fiber optics, making it an even FASTER way to transfer data for Internet, TV and Digital Voice--literally connecting you to all you love at the speed of light."

Where does it say that FiOS is NOT the 100% fiber optic network for TV?

9) Title Shopping, the Flows of Money and Verizon's Integration by Verizon's Affiliates.

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The report supplies an analysis of the flows of money based on Verizon New York using the Title II classification to charge local phone customers for the deployment of FiOS as well as the funding of other affiliate company activities, which also use Title Shopping to get financial and regulatory perks.

See the report: "It's all Interconnected" for details.

<http://newnetworks.com/verizonfiostitle2/>

New Networks, established in 1992, is an independent market research and consulting firm, and today we have a team of independent experts, auditors and lawyers who have worked on this report and project.

<http://www.newnetworks.com>

¹⁵ <http://www.verizon.com/home/fios/>